



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 7124-22
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the Board waived the statute of limitation in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 19 May 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include to the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on █. Following three mental health interviews in September 2002, a psychologist completed a recruit mental health administrative separation recommendation for Anxiety Disorder (AD) (SF600), not otherwise specified. He diagnosed your AD based upon evidence of 9 out of 11 total factors as well as

phobic reactions due to your description of having fear in closed spaces and of being in large crowds. This recommendation commented that reported a history of anxiety symptoms prior to beginning recruit training which had increased in frequency and intensity at recruit training. Your noted symptoms included “multiple experiences of rapid heart rate, shortness of breath, physical trembling/sweating, and choking sensation.” It described your mood as dysphoric and anxious with a congruent affect, and expressly stated that the “assessment confirms the following psychiatric diagnosis: Axis I: Anxiety Disorder NOS, 300.00, EPTE.” The staff psychologist recommended an entry-level separation due to your disqualifying psychiatric condition based on the assessment of its likelihood of affecting your potential for performance of expected duties and responsibilities while on active duty. You were issued notice procedures for administrative separation, on 30 September 2002, informing you of the intent to separation you by reason of defective enlistment and induction due to erroneous enlistment as evidenced by your diagnosed AD. You elected not to submit a statement to contest your separation, and you were discharged, on 4 October 2002, with uncharacterized entry-level service for the reason of erroneous entry under the authority of section 1910-130 of the Navy’s Military Personnel Manual (MILPERSMAN), with a prohibitive reentry code of RE-4.

You previously sought documentary review of your discharge from the Naval Discharge Review Board (NDRB), requesting to upgrade your discharge and change your reentry code. At that time, you contended that you could not concentrate well when you enlisted due to family problems and feeling anxious when you were moved into a different training program that affected your training schedule. The NDRB denied your application after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation to further your opportunity to join the Customs and Border Patrol, as well as your contentions that: your in-service diagnosis of AD was an error used as a pretext to discharge you, you were never diagnosed with an AD whether before, during, or after your military service, that your post-discharge evidence demonstrates you had the potential to continue successfully serving, and that your post-discharge character merits consideration of an upgraded characterization. For purposes of clemency and equity consideration, you submitted evidence that you have completed your undergraduate degree, completed numerous certifications with the [REDACTED], [REDACTED], and [REDACTED] of Security, have received personal awards from [REDACTED], are a member of the Bronx police lodge, and have a supporting letter attesting to your post-discharge character and behavior. Your former pediatrician provided a recent letter regarding his treatment of you from November of 1994 through April 2002, affirming that you had no reported experience of symptoms or diagnosis of anxiety or other mental illness during his period of care. You also submitted a letter from your current civilian physician stating that you have never been diagnosed or treated for any form or type of anxiety. This letter described that you had reported temporary and situational anxiety during evaluations but never continuous symptoms of a disorder.

Because you contend that the circumstances of your discharge were affected by an erroneous mental health diagnosis, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His anxiety disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Petitioner has submitted evidence from civilian providers that he does not currently report clinically interfering symptoms of anxiety, and he denies clinical interference of anxiety symptoms in his past. However, this information is temporally remote to his military service and is based on recall, while the information he provided in military service is based on his experience and report at the time. While his pediatrician did not report a mental health diagnosis prior to his entry into service, the Petitioner's report is that his personal circumstances worsened and became stressful due to his parents' marital conflict shortly before he entered military service. There is insufficient evidence of error in his in-service diagnosis. Additional records (e.g., complete active duty mental health records describing the Petitioner's diagnosis and symptoms) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of error in [the] in-service diagnosis."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined you were properly discharged for erroneous enlistment based on your AD diagnosis. The Board concurred with the AO concerning the lack of evidence that your in-service diagnosis was erroneous or that it was based upon a pretext or reason other than your reported symptoms during your military service. In this regard, and addressing your narrative reason for separation first, the Board noted that erroneous entry is a suitable reason for separation upon discovery of a medically disqualifying diagnosis for which, if the condition had been known at the time of entry, the enlistment would not have occurred. The Board found that the evidence contained in the SF600 documenting the evidence of your symptoms, the resulting diagnosis, and the assessment of the impact your condition would most likely have upon your potential for service, provided a reliable, impartial, and sufficient basis for your discharge due to erroneous enlistment. The Board emphasized that this basis does not reflect negatively upon a discharged individual but, rather, simply reflects a disqualifying factor for the unique demands of military service.

With respect to your uncharacterized discharge, the MILPERSMAN directs that, when separation is for the reason of an erroneous enlistment, the characterization of service will be "Honorable" *unless an entry level separation or void enlistment is required* [emphasis added]. The MILPERSMAN further directs that a separation initiated while a member is in an entry level status, defined at the time of your military service as being within the first 180 days of continuous active duty, will be described as entry level and, therefore, remain uncharacterized except when characterization under other than honorable conditions is authorized or when an honorable discharge is warranted by the presence of unusual circumstances involving personal conduct and performance. The MILPERSMAN further specifies that, even with the presence of unusual circumstances, an Honorable characterization requires the approval of the Secretary of

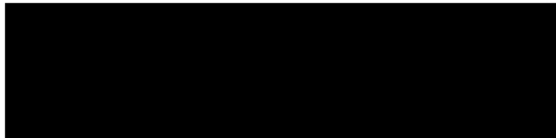


the Navy and will only be considered if the reason for separation is under sections 1910-100, 102, 168, or 164. The Board's review of your record identified no unusual circumstances which might merit an Honorable discharge. Additionally, the Board found that your reason for separation is not included among the sections for which an exception might be granted. Further, the Board observed that your period of service of 1 month and 15 days clearly fell within the 180-day entry level period for which service shall remain uncharacterized. Finally, although the Board acknowledged that you have presented evidence of admirable post-discharge character and accomplishments, the Board concluded that the tenets of clemency do not serve as an appropriate basis to overturn the properly applied provisions of governing regulations. As a result, even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/31/2023



Executive Director

Signed by: 